

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1383 of 1984

Date of decision: 02-09-96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GSRTC

Versus

VALJIBHAI N JADAV

Appearance:

MRS.M. Mazgaonkar for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/09/96

ORAL JUDGEMENT

The respondent workman, a conductor of the Gujarat State Road Transport Corporation, raised industrial dispute against the order of the Corporation under which he was dismissed from service after holding full-fledged departmental inquiry. The charges against the workman were that he has not issued tickets to some

of the passengers, and he has collected the fare from four passengers but not issued tickets to them, etc., The Labour Court under its award dated 19th December, 1983 partly allowed the reference. The Corporation was ordered to reinstate the workman in service on the original post with continuity of service, but without backwages. The penalty of dismissal was substituted by the penalty of withholding of one grade increment for one year without permanent effect. This award is challenged in this special civil application.

2. The contention of the learned counsel for the petitioner is that the labour court should not have interfered in the matter as the respondent workman was found guilty of serious misconduct. To charge fare from the passengers and not to issue tickets is a serious misconduct and the minimum punishment on such proved misconduct is dismissal from service. On the other hand Mr. H.K. Rathod, learned counsel for the respondent, contended that the Tribunal has jurisdiction to go into the question of harshness or otherwise or disproportionate punishment on proved misconduct. This power is conferred on the Tribunal, Mr. Rathod contended, under section 11A of the Industrial Disputes Act, 1947.

3. Mr. Rathod fairly conceded that he has no objection in case the Corporation continues to engage the respondent on and take the work of the post of helper or any other post equivalent to that of conductor but may not take the work of conductor.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. On 8th April, 1984 this court granted interim relief in following terms:

"Interim relief of stay of the operation of the impugned order on condition that the petitioner-Corporation will reinstate the respondent workman in service within four weeks from today on the post of helper or any post other than bus conductor, in case the post of helper is not available in some Division near to Ahmedabad and subject to this last salary being protected and the respondent workman agreeing to withdraw the contempt proceedings."

Operation of the award has not been stayed, but interim relief has been granted in favour of the Corporation that the respondent workman be reinstated in service on the post of helper or any other post other than bus

conductor. In case post of helper is not available, in some Division near to Ahmedabad and subject to his last salary being protected. The counsel for the respondent has fairly conceded that he has no objection if the arrangement made by this court by way of interim relief is continued. The counsel for the parties stated that in pursuance of the aforesaid interim order the workman has been reinstated on the post of helper in a Division near to Ahmedabad and he is working till date. During all this period the work of the petitioner was not satisfactory is not the case of the petition. Under section 11A of the I.D. Act the Tribunal or Labour Court has ample power to go into the question of harshness or disproportionate penalty on the proved misconduct. It is not the case where the workman has not been given any penalty. Punishment of dismissal given by the Corporation has been substituted by the penalty of withholding of one grade increment for one year without any future effect. It is not the case of the Corporation before the labour court that during the period of dismissal the workman was in gainful employment. Dismissal was made on 26th July, 1982 and the award was made by the Labour court on 19th December, 1983. The Labour Court has not granted backwages to the respondent workman. Punishment of termination of services of the respondent is taken to be extreme punishment and for taking this view reasons have also been recorded. Though on the same set of evidence this court could have taken different view other than what is taken by the Labour Court on the question of penalty to be given to the respondent workman, the view taken by the labour court cannot be said to be unreasonable or arbitrary and as such no interference by this court with the award made in the present case is called for.

6. Industrial Disputes Act, 1947 is a special legislation governing the disputes between the workmen and employer and other parties as defined in the said Act. The legislature in its wisdom has not provided appeal or revision to this court against the awards made by the labour court or industrial tribunal in matters of industrial disputes. The object is to give finality to the decision of the Labour court or Tribunal. The High Court under Article 227 of the Constitution cannot assume the limited prerogative to correct all species of hardship or wrong decisions. The power of judicial review of this court under Article 227 of the Constitution must be restricted to cases of grave dereliction of duty and flagrant abuse of the fundamental justice where grave injustice will be done unless the High Court interferes. It is not the case which could

have been categorized that in case interference is not made by this court in award made by the labour court grave injustice will be done to the Corporation. Taking into consideration the totality of the facts and circumstances of the case no interference is called for.

7. In the result this special civil application fails and the same is dismissed. However, the award is modified to the extent of reinstatement ordered of the respondents workman to the post of conductor. It shall be open to the petitioner to reinstate the workman on the post of helper or any other equivalent post where the post of helper is not available. It shall be further open to the petitioner to reinstate the petitioner in some other region nearby Ahmedabad. The petitioner may not reinstate the workman on the post of conductor. Subject to the aforesaid directions rule discharged. No order as to costs.

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